

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDUARDO GUERRERO,) Case No. EDCV 08-0932-R(RC)
)
 Petitioner) ORDER ADOPTING REPORT AND
) RECOMMENDATION OF UNITED STATES
 vs.) MAGISTRATE JUDGE
) AND ORDER DENYING
 LARRY SMALL (Warden),) CERTIFICATE OF APPEALABILITY
)
 Respondent.)
 _____)

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the petition and other papers along with the attached Report and Recommendation of United States Magistrate Judge Rosalyn M. Chapman, and has made a de novo determination.

IT IS ORDERED that (1) the Report and Recommendation is approved and adopted; (2) the Report and Recommendation is adopted as the findings of fact and conclusions of law herein; and (3) Judgment shall be entered denying the petition for writ of habeas corpus and dismissing the action with prejudice.

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1 This Court finds that an appeal would not be taken in good faith,
2 and that petitioner has not made a substantial showing that he has
3 been denied a constitutional right, for the reasons set forth in the
4 Report and Recommendation of the United States Magistrate Judge, and
5 accordingly, a certificate of appealability should not issue under
6 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b). Slack v. McDaniel,
7 529 U.S. 473, 483, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000);
8 Mayfield v. Calderon, 229 F.3d 895, 900 (9th Cir. 2000). Thus, IT IS
9 FURTHER ORDERED that a Certificate of Appealability be DENIED.

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11 FINALLY, IT IS FURTHER ORDERED that the Clerk shall serve copies
12 of this Order, the Magistrate Judge's Report and Recommendation and
13 Judgment by the United States mail on petitioner.

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15 DATED: June 4, 2010



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17 MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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